than what they would be liable to in Singapore under the Hague-Visby Rules. In other words the shipper's or consignee's claim in our instant case here would be subjected to a maximum limit which is very much lower than the maximum to which it would be subjected to in Singapore.

In our instant case having regard to the provisions of Art. X(a) and (b), these bills of lading are subject to the provisions of the Hague-Visby Rules. Under Art. IV Rule 5(a) the limits of the maximum liability of the carrier (the shipowner) to the plaintiffs' claim would be as provided there.

What is the effect of the exclusive choice of jurisdiction clause which in our case gives exclusive jurisdiction to the court at Djakarta, having regard to the provisions of Art. III Rule 8 of the Hague-Visby Rules. *Ex facie* this does not offend against Art. III Rule 8. However as in our case when a dispute arises between the parties as to their respective legal rights and duties under the contract and the dispute is one concerning the negligence, fault or failure of the carrier which they are unable to resolve by agreement and the carrier seeks to bring the clause into operation and to rely upon it and it is shown or accepted that the court in Djakarta – the chosen exclusive jurisdiction – would apply domestic substantive law which would result in limiting the carrier's liability to a lower sum than that to which he would be subjected to under Art. IV Rule 5(a) in Singapore, then Art. III Rule 8 will come into play and the exclusive jurisdiction clause will be treated as if of no effect.

The defendants however submit that our Carriage of Goods by Sea Act 1972 is not in the same terms as the U.K. Carriage of Goods by Sea Act 1971 where it is provided in the Act that the Hague-Visby Rules in the Schedule to the Act shall have the force of law.

It is submitted by the defendants that this is because Parliament wanted to preserve the freedom for the parties to contract outside the Act and the exclusive jurisdiction clause is not affected by the Hague-Visby Rules and effect must be given to that clause.

Such a construction I find would ignore the provisions of Art. X Rule 1(a) and (b) of the Rules that they apply to all bills of lading issued in Singapore. Such a construction will also be contrary to the stated purpose of the international convention, *viz.* the unification of the domestic laws of the contracting States.

I am also guided by what Lord Diplock said in *The Morviken (supra):*–

> '... The only sensible meaning to be given to the description of provisions in contracts of carriage which are rendered "null and void and of no effect" by this rule is one which would embrace every provision in a contract of carriage which, if it were applied, would have the effect of lessening the carrier's liability otherwise than as provided in the rules."

I therefore rule that the choice of exclusive jurisdiction clause giving the court in Djakarta exclusive jurisdiction is rendered null and void and of no effect. In these circumstances the defendants to succeed in their motion for a stay of proceedings here must satisfy two conditions as I have stated earlier and they clearly do not satisfy the condition that a stay would not deprive the plaintiffs of a legitimate personal or judicial advantage which would be available to them in this court.

For these reasons the motion of the defendants failed here and the stay of proceedings is refused. The defendants shall pay the costs of this motion.

I would like to add that on the preliminary point taken by the plaintiffs, that since the defendants had not entered a conditional appearance, they had submitted to the jurisdiction of this court. I would rule against that submission as the application here is not to set aside the Writ and service but an application for stay of proceedings. See remarks of Brandon J. (as he then was) in *The Eleftheria, (supra)* at p. 240.

Application dismissed.

Solicitors: *Niru & Co.; Wee & Ramayah.*

SEE AH HWA & ANOR. v. ONG HOCK THIAN & ANOR.

[O.C.J. (Lai Kew Chai J.) September 12, 1984]
[Singapore – Suit No. 4703 of 1983]

Damages – Fatal accident – Deceased aged 22 working for sub-contractor – Basic pay of about $600 per month – Whether multiplicand of $530 p.m. too high.

This is an appeal against the assessments of the learned Assistant Registrar who allowed $95,000 for loss of earnings using the multiplicand of $530 p.m. over a multiplier

of 15 years and $3,000 for pain and suffering. The deceased, aged 22, died on November 3, 1979 after a motor accident. He was a mechanical fitter working for a sub-contractor. The appellants argued that the multiplicand based on the basic salary of $1,000 was much too high. The basic pay of the deceased was $20 per day or about $600 per month.

Held, allowing the appeal: (1) the multiplicand of $530 p.m. was manifestly on the high side. The earnings of the deceased less income tax should more realistically be $760 p.m.;

(2) the multiplicand should be $340 p.m., after deducting the monthly expenses of $420. No allowance for Central Provident Fund should be given. The loss of earnings should therefore be $61,200;

(3) for pain and suffering, the sum awarded should be reduced from $3,000 to $1,000.

APPEAL IN CHAMBERS.

Ronnie Quek for the appellants/defendants.

Miss Chia Choy Ping for the respondents/plaintiffs.

Cur. Adv. Vult.

Lai Kew Chai J.: This is an appeal against the assessments of the learned Assistant Registrar who allowed $95,400 for loss of earnings using the multiplicand of $530 per month over a multiplier of 15 years and $3,000 for pain and suffering. There is no appeal against the other assessments and orders of the learned Assistant Registrar.

For the appellants, it was argued that the multiplicand based on the basic salary of $1,000 was much too high as a substantial portion of it was overtime pay and as income tax was not deducted. The appellants submitted that $200 per month as the multiplicand was more realistic. The appellants do not dispute the multiplier of 15 years. As for the item for pain and suffering, it was submitted that the deceased was in coma immediately after the accident followed by death and that therefore there was hardly any sensation of pain and suffering.

The father and a co-worker of the deceased gave evidence for the respondents before the learned Assistant Registrar. The deceased died on November 3, 1979 after a motor accident at the 'T' junction between Yuan Sheng Road and Ho Ching Road, Singapore. He was then 22 years old and was working for a sub-contractor in the Promet Shipyard, Singapore on a 6 month work permit. He was a mechanical fitter. He had studied up to Secondary II in Johore, Malaysia, after which he started work at the age of 15. The father said in evidence that the deceased used to remit to him "around $400 at least per month." Evidently, it could be more or less than $400 per month.

The co-worker, Soh Swee Seng, testified that the deceased "earned about $20 per day (with) a monthly salary of $900 to $1,000 per month inclusive of overtime." He said that in 1979 the shipyard was very busy with work to do all the time. It was obviously a peak period, with workers earning a lot of overtime. He also said that by 1982 work in the shipyard had lessened. The deceased did not pay any income tax because he was only on a 6 month work permit.

I am persuaded that the multiplicand of $530 per month, derived from the gross salary of $1,000 per month less the expenses of the deceased, was manifestly on the high side. In assessing the multiplicand, one must start off with the earnings at the time of the accident. The basic pay of the deceased was $20 per day or about $600 per month. One must allow some overtime pay, but not the entire overtime pay on the upper end of the scale, seeing that the overtime pay was earned at a peak period of activities in the shipyard. I am of the view that the earnings of the deceased all told and less income tax should more realistically be $760 per month. I see that the learned Assistant Registrar had allowed $470 per month as the expenses of the deceased. It is made up of $70 for rental, $300 for food, $50 for the motorcycle and $50 for entertainment. I think that the item for food should be $250 per month. The expenses should therefore be $420 per month. That leaves the multiplicand at $340 per month. I agree with the learned Assistant Registrar that no allowance for Central Provident Fund be given. The loss of earnings should therefore be $61,200 which, I think, is reasonable considering the abilities of the deceased, the contingencies in life and that this is a lump sum award up front.

As for pain and suffering, I accept in part the appellant's submission and would reduce it from $3,000 to $1,000.

There will be an order accordingly. I will also allow the appellants the costs of this appeal.

Order accordingly.

Solicitors: *Shook Lin & Bok; Y.M. Ho & Chia.*